

REMARKS

In the Office Action, claims 14, 28, 32, 33 and 34 are provisionally rejected under 35 U.S.C. § 101; claims 1-18 and 20-28 are provisionally rejected under the judicially created doctrine of double patenting; and claims 35-36, 38-41, 43-44 and 50-55 have been objected. Applicants believe that the rejections have been overcome at least for the reasons set forth below.

With respect to the rejection of claims 14, 28, 32, 33 and 34 under 35 U.S.C. § 101, the Patent Office alleges that these claims claim the same invention as that of claims 14, 28, 32, 33 and 34 of U.S. Patent Application No. 10/182,854. In response, claim 14 has been canceled and thus has rendered this rejection moot in view of same.

With respect to claims 28, 32, 33 and 34, claims 28 and 32 are the sole independent claims where claims 33 and 34 depend from claim 32. Claims 28 and 32 have been amended to further recite that the nutritional composition includes threonine in an amount of at least 5.5% by weight of the protein source. Thus, as amended, Applicants believe that the rejection of claims 28, 32, 33 and 34 under 35 U.S.C. § 101 has been overcome and therefore should be withdrawn.

In the Office Action, claims 1-18 and 20-28 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-18 of U.S. Application No. 10/182,854. In response, Applicants have filed a Terminal Disclaimer. Therefore, Applicants believe that this rejection has been addressed and thus should be withdrawn.

In the Office Action, claims 35-36, 38-41, 43-44 and 50-55 have been objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form. In response, claim 35 has been amended to further recite administering to the patient a nutritional composition that has a protein source including amino acids wherein the nutritional composition includes a therapeutically effective amount of threonine that is at least 5.5% by weight of the protein source where claims 36 and 39 depend from claim 35 and where claim 38 has been canceled without prejudice or disclaimer. Further, claim 40 has been amended to further recite administering a nutritional composition that has a protein source including amino acids to the patient wherein the nutritional composition contains a therapeutically effective amount of threonine that is at least 5.5% by weight the protein source where claim 41 and 44 depend from claim 40 and where claim 43 has been canceled without prejudice or disclaimer.

With respect to claims 50-55, each of these claims have been amended to further recite that the amount of threonine is at least 5.5% by weight of the protein source. Thus, Applicants believe that the objection to claims 35-36, 38-41, 43-44 and 50-55 be withdrawn.

Applicants have amended claims 45, 47 and 49 and further have canceled claims 46 and 48 without prejudice or disclaimer. Claim 45 has been amended to further recite administering a nutritional composition that has a protein source including amino acids to the patient wherein the nutritional composition includes a therapeutically effective amount of threonine that is at least 5.5% by weight of the protein source. Claims 47 and 49 depend from claim 45. These claims were previously withdrawn in response to the Restriction Requirement issued on October 1, 2002. However, the Patent Office indicated that claims 1-26 and 28-34 were linking claims and that upon allowance of same the Restriction Requirement would be withdrawn and thus any claims depending from or otherwise including all the limitations of the allowable linking claims will be entitled to examination. Therefore, Applicants believe that claims 45, 47 and 49 as amended should be examined on the merits and further rendered allowable.

For the foregoing reasons, Applicants respectfully submit that the application is in condition for allowance and earnestly solicit reconsideration the same.

Respectfully submitted,

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